Farms and Fun: Reducing Liability Risk for Agritourism

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Research & Materials

State Agritourism Statutes
Agritourism and Insurance
Agritourism Immunity Laws in the United States
Agritourism Best Management Practices and Plan of Operation
Workbook: Emergency procedures and safety information for agritourism and related outdoor events
Decision Making for New Agritourism Activities

Trends in Agritourism:
Popular Events & Activities
Overall Trend

1. Agritourism 365
   a. More than fall!
   b. Events & activities out of season
   c. Spread Fix Costs and Financial Risk
   d. More than revenue – Customer Awareness
   e. Keep ‘best’ staff for all/most of year

2. Authenticity

Trends We See...

1. Weddings
2. Private Events & Photography
3. Beer, Wine, Spirits
4. Culinary
5. Adventure & Ag-tivities
1. Weddings

- Pricing
- Add planning services
- Alcohol?!?
- Rent items

2. Private Events & Photography

- Birthdays
- Engagements
- Showers
- Unsupervised events?
- Contracts, farmstead rules, etc.
3. Beer, Wine, Spirits

- Always cutting edge!
- Adding more value to crops
- Tastings
- Hard Cider

4. Culinary

- On-Site Food
- Dinner you do/promote
- Dinner for charity
- Specific, higher value added products
5. Adventure & Ag-tivities (Exercise)

- Connecting to food in a fun way
- Unplugging
- Mazes are still relevant
- Nature connections
- Games, Games & More Games
- Zombie paintball

Planning Agritourism Activities
Where do we begin?
How are decisions made?

“"It looks fun!"”

“It seems to make money for them!”

Decision Making for New Agritourism Activities

What activities worked for you? For others? How do you decide if it will work for your farm?

Decision making for new agritourism activities at the farm are complex. Many farms adopt new activities based on seeing the activity at another farm or venue. While lots of planning goes into the activity, few farms have a comprehensive process they use in developing new activities. The categories below were developed based on reviews of agritourism farms in Ohio to use in selecting new activities.

Enhances My Farm Brand – The farm’s brand is its biggest asset. The brand keeps people returning year after year for activities and events. The brand says who the farm is, how they operate and how they treat customers. Reviewing each new activity as a part of the farm’s brand helps ensure continued success. Using the mission statement to guide the discussion and talk about how the activity fits within the brand and specific aspects of the farm.

Fits My Target Market – Teenagers are very different from toddlers. Keeping mom and dad or grandma and grandpa engaged during visits to the farm matters. Discuss how the target market will engage with the activity.

Safety and Insurance Considerations – Begin by researching best practices for the event (if they exist), and think through scenarios of customer use. Review the idea with your insurance company to see what questions or suggestions they might have. Utilize the website safeagritourism.org provides detailed information to plan for new activities and best practices for many common activities on farms in the US. The website includes walkthroughs of activities, safety checklists, and many resources to assist. In addition to using this information for new activities, agritourism farms should utilize this website for reassessing current activities on their farms.

Labor, Expertise and Cost to Build/Install – While farmers love to build things themselves, this is not always the best choice. Some insurance companies require manufacturer’s specifications and use requirements. Items such as bridges may fall under county jurisdiction. Make decisions on which parts of the activity can be built versus what should be purchased. Purchasing decisions should pay special attention to quality of products and life expectancy.
Topics to Guide Discussion

1. Enhances My Farm Brand
2. Fits My Target Market
3. Safety and Insurance Considerations
4. Labor, Expertise and Cost to Build/Install
5. Labor to Operate
6. Income or Benefit to the Farm
# Pumpkin Slingshot

![Image of people using a slingshot]

<table>
<thead>
<tr>
<th>Activity</th>
<th>Enhances my farm brand</th>
<th>Fits my target market</th>
<th>Safety and Insurance considerations</th>
<th>Labor, expertise and $ to build/install</th>
<th>Labor to operate</th>
<th>Income or benefit to the Farm</th>
<th>Other</th>
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<tbody>
<tr>
<td>Slingshot</td>
<td>Yes – active, can do with family</td>
<td>Connects parents/kids</td>
<td>Regular safety checks needed. New slingshots each season. Build is specific due to potential turning of pocket.</td>
<td>Est. $500 per site in supplies</td>
<td>1 person per 2 slingshots. Labor cost would be $13/hour of operation</td>
<td>Did budget. The farm will net $10,000 per season</td>
<td>Mom hates this idea. Many accidents on other farms</td>
</tr>
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</table>
Paintball

Combine Slide
Easter Egg Hunt

Bauman Farms' Easter Egg Hunt
Check out the most fun, stress-free, and prize packed local Easter Egg Hunt! True fun for the whole family!
Bauman Farms is located south of Portland & north...

YOUTUBE.COM

Like Comment Share

7,119,141 Views
### Farm Fun and Liability Risk

<table>
<thead>
<tr>
<th>Activity Idea</th>
<th>Enhances my farm brand</th>
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**Liability Risk**
Agritourism and liability risk

1. Negligence
   • A failure to meet the appropriate duty of care that causes injury to a person or property.

2. Product liability
   • A defective product causes injury to a person or product.

2-year-old boy dies from injuries suffered when bounce pad blows away near Lincoln

Family of Oakland teenager killed in hayride crash settles lawsuit with farm

Cassidy Charette was killed on Oct. 11, 2014, in a haunted hayride at Harvest Hill Farms.
Managing agritourism liability risk

- Selection
- Preparedness
- Insurance
- Immunity laws

Immunity laws

- Agritourism immunity laws
- Recreational user laws
- Equine activity acts
- U-pick immunity laws
Agritourism immunity laws

• Protect the agritourism operator from legal liability for injuries resulting from certain agritourism activities.

• Based on the legal theory of assumption of risk.
  • A participant who voluntarily chooses to engage in a risky activity is responsible for his/her own safety and assumes the risk of being injured by that activity.
Common elements of agritourism immunity laws

Defining “agritourism”

• What types of operators and activities does the immunity law protect?
• An operator or activity that doesn’t fit definitions won’t receive immunity.
• Common requirements:
  • Activity takes place on a “farm,” “ranch,” “commercial farm,” “working farm,” “farm engaged in agricultural production.”
  • Operator may or may not receive compensation for the activity.
  • Activity is for educational, recreational, entertainment, historical, cultural purposes.
  • Statute may list specific examples.
Oklahoma Agritourism Activities Liability Limitations Act

“Agritourism activity” means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

Inherent risks

- Immunity extends only to the “inherent risks” of activities.
  - Naturally occurring risks over which operator has little or no control.

- Statutes define “inherent risks”
  - Fairly consistent from state-to-state, with exception of diseases from animals or manure.
    - Ohio includes possibility of contracting illness resulting from physical contact with animals, feed, waste or surfaces contaminated with waste.
    - Maine includes “the depositing of manure.”
  - Several laws include participant’s actions as an inherent risk.
Kansas Agritourism Promotion Act

“Inherent risks...” means those dangers or conditions which are an integral part of such agritourism activity including, but not limited to, certain hazards such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming or ranching operations. “Inherent risks of a registered agritourism activity” also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to follow instructions given by the registered agritourism operator or failing to exercise reasonable caution while engaging in the registered agritourism activity.

Exceptions to immunity

• Situations that do not receive liability protection.
• Common exceptions:
  • Operator’s acts constitute negligence or willful or wanton disregard for safety
  • Operator has actual knowledge of a dangerous condition and fails to warn.
  • Operator fails to properly train employees
  • Operator fails to vaccinate or quarantine sick domestic animals.
  • Operator permits minors to use facilities not reasonably appropriate for age.
  • Operator fails to make reasonable inspection of equipment or property.
  • Operator did not meet affirmative requirements of the law.
Affirmative requirements

- Actions operator must take in order to receive the law’s protection.
- Most common: must provide notices to participants.
  - Posted warning signs.
  - Notices in written agreements.
- Some states also require registration or approval of operation plan.

State laws that require operator to provide notices

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<th>On posted signs</th>
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* In contracts with agritourism participant only. Ark. Stat. 5-11-107.
** May post a sign to obtain a signed release indicating that participant has received written notes. K.S.A. 247-800(b) and 7 M.R.S.A 1233.
Wisconsin

Notice:  A person who observes or participates in an agricultural tourism activity on this property assumes the risks inherent in the agricultural tourism activity. Risks inherent in the agricultural tourism activity may include conditions on the land, the unpredictable behavior of farm animals, the ordinary dangers associated with equipment used in farming operations, and the potential that a participant in the agricultural tourism activity may act in a negligent way that may contribute to injury or death. The agricultural tourism provider is not liable for the injury or death of a person involved in an agricultural tourism activity resulting from those inherent risks.

Registration or operation plans

- Operator may/must register with state agency.
- Only registered operations receive liability protection.
- Registration sometimes includes promotion and publicity by the state agency.
- Louisiana requires operation plan certification.
  - Listing of activities, plans for minimizing risks, locations of warning signs.
  - Reviewed and approved by Louisiana Extension.
  - Update every 5 years or when adding a new activity.
What about waivers?

- A waiver or release of liability states that the participant is assuming the risk of the activity and promises not to sue the operator if harmed.
- Does the immunity law negate need for waivers?
  - Does the law address waivers?
    - Some allow use of waiver rather than posted signs.
  - Does the law cover all of the operation's activities?
  - Does insurance provider or attorney encourage use of waivers?

Other immunity laws might apply

- Recreational user statutes
  - All states have one.
  - Immunity for allowing recreational uses on property.
  - Some state agritourism laws amended recreational use state to include agritourism or farm touring.
  - Some laws do not apply if landowner receives fee or benefit.
  - See our compilation on nationalaglawcenter.org/state-compilations
Other immunity laws might apply

- **U-pick immunity laws**
  - No liability for harm to persons who are on land to purchase or pick fresh produce sold directly from the field.
  - Narrow circumstances: extends to injuries due to land surfaces or tillage of soil.

- **Equine activity acts**
  - Liability protection if a participant is harmed due to inherent risks of participating in equine activities and being around equine.
  - Require operator to post warning signs.

Using immunity laws

- Raised as a defense in litigation.
- Harm must be result of an inherent risk or other risk identified in the statute.
- Operator must meet all definitions and requirements of statute.
- Waivers might still be advisable.
- The laws don’t replace Best Management Practices and insurance!
Agritourism and Insurance

Agritourism insurance is special insurance

- Agritourism activities aren’t usually included in a general property liability policy.
- Operator must obtain customized “riders” that amend liability coverage above and beyond the general policy.
- Riders should be tailored to the activities taking place on the operation.
How much will it cost?

• Depends upon many factors:
  • Types and number of activities.
  • Number of visitors.
  • Risks inherent in the property.
  • Precautions and management practices.
  • Compliance with laws, regulations and industry practices.
  • Immunity laws.

Insurance considerations

• Not all companies offer agritourism riders.
• Find a company and agent familiar with agritourism.
  • Check company’s A.B. Best rating
• Review all activities with agent to ensure coverage.
• Be aware of policy exclusions.
• Maintain regular communication with agent—new or ceased activities, property walk-throughs.
• Keep adequate records.
• Don’t disregard practices and preparedness.
Emergency Preparedness

Online Bulletin Available at:

u.osu.edu/agritourismready
Risk Management

- Perform a Risk Analysis
- Determine your actions
Safety vs. Emergency

Safety Preparations
- Putting in fire control systems
- Making rules
- Eliminating potential injury ‘items’
- Equipment back-ups
- Etc.............

Emergency Preparedness

The National Fire Protection Association (NFPA)

“Activities, tasks, programs, and systems developed and implemented prior to an emergency that are used to support the prevention of, mitigation of, response to, and recovery from emergencies.”
What does it mean to be Emergency Ready?

Improve Practices → Prepare

Prepare → Respond & Mitigate

Respond & Mitigate → Recover

Recover → Improve Practices

Why Be Prepared in Emergency Management?

- Emergencies and disasters do not discriminate - they can happen anytime, anywhere, and to anyone.

- Just as individuals and families must prepare for emergencies, so too must businesses. Preparedness helps to ensure the safety of people and assets, which in turn helps to protect the business investment itself.

- Agriculture operations are unique compared to other businesses.
Creating a Farm Support Team

- Start with county Emergency Management Agency
- Meet with local fire department, Health Department, EMA, Sheriff, Local Police, Attorney and Insurance Representative.
- Each team member has a Unique role
- Host a familiarization tour of your farm and agritourism operation
- Provide a copy of finish product to team members.

Scenarios:
Planning for the ‘what if?’
Traffic Accident

• Train staff to call 911 and give location
• Treat as an off farm accident
• Provide emergency access
• Work with officials to mitigate risk to emergency responders

On June 29th, a wedding was about to take place at the scenic Blue Waters Farm. Unfortunately, at 2pm a derecho straight wind storm blew through and took out the power in the entire tri-county area. Currently there is no estimated time of when the power will be restored. The passing storm caused the temperature to rise to 85 degrees with humidity at 90 percent. The wedding is supposed to start at 6:30pm in the barn and currently there is a tree across the driveway, the caterer doesn’t know where to setup, and the generator is too loud that it drowns out the ambience of the wedding.

• What precautions should the owner take before the wedding begins?

• What food safety concerns are there?

• What are the ventilation concerns?

• What other utilities go out when the electric goes out?
Lost Power/Utilities

Can you stay open?
- Worth having generator?
- Water for food service
- Septic issues
- Your payment systems

Who's in charge? This is the communications person on the farm.
- Every question goes to this one person
- It's part of your plan
- Do not deviate no matter what
- Consider a professional PR person

Example: Recover

Who's in charge? This is the communications person on the farm.
- Every question goes to this one person
- It's part of your plan
- Do not deviate no matter what
- Consider a professional PR person
End Result: An Emergency Action Plan

A flip chart to hang up at the farm will be your end result.

It is a starting point to adopt emergency plans.

The Powerpoint file can be branded to the specific farm.

Sally's Pumpkin Patch

Emergency procedures
and safety information

Sally's Pumpkin Patch

With applications to pick-your-own farms to large agritourism operations, fairs, festivals and other events as they plan for emergencies when customers and crowds are present.

Natural Disasters: Storms, Tornadoes, Floods

Fires

Injuries and Medical Emergencies

Equipment Failures – Operations & Financials

Traffic Accident – Main Road or on Property

Armed Intruder

Aggressive Guests
OHIO STATE UNIVERSITY EXTENSION

Numbers you need

Sheriff ______________________
Gas provider ______________________
Elect provider ______________________
Owner Cell ______________________

Information to know

Watch vs. Warning
Weather alerts for smart phones
NOAA weather radio
1. Know who makes the call...
   a. When it’s a watch we _______
   b. When it’s a warning we _______
   c. We evacuate when _______
2. Storm Shelter Location:

Resources to review

Ready.gov/business
sba.gov/content/disaster-preparedness
NWS Storm Spotter classes; NOAA site

Procedures to follow

1. Talk with sheriff or local official about the
decision to evacuate or remain in place.
   a. Make decision based on this and the
   plan
2. Use siren or speaker system to
communicate with guests/employees
and give authority.
3. Employees know to respond by:
   a. Directing traffic out of form OR
   b. Directing guests to the
designated shelter area
4. Get remaining employees or even guests
to safest location.
5. Communicate end of threat or event to
all remaining at location.
6. Refer to medical emergencies or other
section if necessary.
7. Have EMA designate if you have a
building that can be a storm shelter.

Natural Disasters: Storms, Tornadoes, Floods

CFAES

AGRITOURISMREADY
Agritourism Emergency Preparedness

How to use

Next step: Risk Management
Farms and Fun: Reducing Liability Risk for Agritourism

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